

BEFORE THE IDAHO STATE BOARD OF LAND COMMISSIONERS

In the Matter of Encroachment Permit Application No.	)	Case No. PH-2021-PUB-20-003
L-96-S-2687	)	
	)	<b>AMENDED FINAL ORDER</b>
William Brownlee – Camp Bay Community	)	
Association, Inc.,	)	
	)	
Applicant.	)	

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The Director hereby WITHDRAWS the Final Order issued on September 24, 2021, and ISSUES this Amended Final Order. The Amended Final Order corrects an incorrect page number reference on the second line of the Final Order’s Conclusions of Law section as well as several clerical errors. The Director has authority to amend an order on his own motion by withdrawing the final order and issuing a new amended final order. IDAPA 20.01.01.760.

**I. NATURE OF PROCEEDINGS**

The Idaho Department of Lands (“IDL”), through the State Board of Land Commissioners, “shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes” as provided in the Lake Protection Act, title 58, chapter 13, Idaho Code. Idaho Code § 58-1303. The corresponding administrative rules promulgated by the State Board of Land Commissioners are IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho.”

On or around May 28, 2021,<sup>1</sup> IDL received an encroachment permit application filed by Camp Bay Community Association, Inc. (“CBCA”). A public hearing was held on August 25, 2021. Chris Bromley served as duly appointed hearing coordinator. On September 13, 2021, the hearing coordinator issued his Preliminary Order, which contains a Findings of Fact and Conclusions of Law.

As Director of IDL, my responsibility is to render a decision pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030 on behalf of the State Board of Land Commissioners and based on the record, which I have reviewed in the context of my personal expertise gained through education, training, and experience. I relied on the record for this matter, including examining the hearing coordinator’s Preliminary Order in light of the entire record in this matter.

## **II. FINDINGS OF FACT**

I adopt the Preliminary Order’s Findings of Fact as my Findings of Fact, except as follows:

- I delete Findings of Fact paragraph one, and insert the following amended paragraph one in its place:<sup>2</sup>

On May 28, 2021, the applicant, Camp Bay Community Association, Inc.

(“CBCA”) filed a complete Joint Application for Permit, numbered L-96-S-2687

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<sup>1</sup> IDL received CBCA’s initial Application on May 13, 2021, and a complete Application on May 28, 2021.

<sup>2</sup> The Preliminary Order states that the Application is for “two community docks.” However, the Application plainly requests a permit for the entire dock system as a community dock as evidenced by it checking the box for “community dock” on *IDL’s Commercial/Community/Non-navigational Encroachment Permit Application*, providing diagrams of all 13 docks, and requesting approval of 19,925 square feet of docks, which is the total square footage of all docks. IDL’s hearing statement describes this Application for all 13 docks, including the two multi-slip docks, as a “community dock system.” To ensure clarity in this order, I will use the term “community dock system” in this Final Order to refer to all 19,925 square feet of docks proposed in the Application.

(“Application”) with the Idaho Department of Lands (“Department” or “IDL”) for a community dock system composed of 13 docks and a boat ramp. The proposed work would take place within Camp Bay on Lake Pend Oreille.

## 1. CONCLUSIONS OF LAW

I adopt the Preliminary Order’s Conclusions of Law, except as follows:

- I delete paragraph 14’s second sentence on page 13 and insert the following amended sentence in its place:

IDL received CBCA’s initial Application on May 13, 2021, and IDL deemed CBCA’s Application complete on May 28, 2021.

- I delete paragraph 19 on page 14 and replace it with the following paragraph 19:

19. CBCA proposes to construct a community dock system and a boat ramp in and around the bed of Lake Pend Oreille. The Lake is a navigable body of water that is regulated by the Department. *Kaseburg v. State of Idaho*, 154 Idaho 570, 572, 300 P.3d 1058, 1060 (2013).

- I amend paragraph 20 on page 14 with two changes:

- I delete the first sentence and insert the following sentence in its place:

- The Application was filed for a community dock system and a boat ramp; this section addresses the community dock system.

- In the second sentence of the paragraph, I delete the word “possession” and replace it with the word “possessing.”

- I delete paragraph 21 on page 14 and 15 and insert the following paragraph 21 in its place:

21. The Application shows a community dock system that includes 13 docks along Camp Bay. The Application provides that “all littoral rights for the

approximate 3,117 linear feet of lake frontage on Camp Bay within the master plan will be assigned to the Camp Bay Community Association and support the community dock application.” *Application* (emphasis added).

- I amend paragraph 36 on page 18 by deleting the words “community docks are” and inserting in its place “community dock system is.”
- I amend Paragraph 48 on page 22 with two changes:
  - I delete the first sentence and insert the following sentence in its place: “The Application proposes construction of a community dock system with the docks not extending beyond the line of navigability.”
  - I delete the words “community docks” in sentences five and seven and replace them with the words “community dock system” in both sentences.
- I amend Paragraph 54 on page 24 by deleting the words “community docks” and inserting “community dock system.”

### **ORDER**

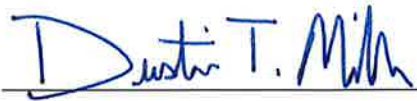
I conclude that the hearing coordinator’s Preliminary Order is based on substantial evidence in the record, and I adopt the Preliminary Order’s Findings of Fact and Conclusions of Law as my decision in this matter, except as specifically set forth herein. I hereby incorporate by reference the Preliminary Order’s Findings of Fact and Conclusions of Law into this Final Order except as specifically set forth herein. I have enclosed and served the Preliminary Order along with this Final Order.

Based on the Findings of Fact and Conclusions of Law, I HEREBY ORDER that Encroachment Permit Application L-96-S-2687 is **CONDITIONALLY APPROVED** as to the community dock system and **DENIED** as to the boat ramp. Approval is subject to:

- Camp Bay Community Association establishing written proof by deeds or leases, to the satisfaction of the Department, of its littoral ownership. The written evidence shall be provided to the Department no later than thirty (30) days after the issuance of this Final Order. If the required written evidence is not provided within thirty (30) days after the issuance of this Final Order, then the conditional approval of the permit application shall expire.
- A permit condition that construction is undertaken and completed during the fall drawdown and winter pool, with current sound / vibration suppression and temporary erosion and storm water best management practices.

This is a final order of the agency. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, the Applicant and any aggrieved party appearing at a hearing have a right to have the proceedings and Final Order reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. Pursuant to Idaho Code § 58-1306(c) and IDAPA 20.03.04.030.09, any aggrieved party other than the Applicant shall be required to deposit an appeal bond with the court in an amount to be determined by the court but not less than five hundred dollars (\$500) insuring payment to the Applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the Final Order. The Applicant does not need to post a bond with the district court for an appeal. The filing of the petition for review to the district court does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274.

Dated this 27th day of September 2021.

A handwritten signature in blue ink, appearing to read "Dustin T. Miller". The signature is written in a cursive, flowing style. The first letter "D" is large and loops around. The last name "Miller" is written with a series of connected loops.

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DUSTIN T. MILLER

Director, Idaho Department of Lands

## CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2021, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Renee Jacobsen, Management Assistant

**Copy sent via email and/or regular U.S. Mail, postage prepaid to Those Who Have Provided Comments.**

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